

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 PLAINTIFF,) CASE NO. 2:12-CR-162
)
 vs.)
)
 TONY R. FISHER,)
)
 DEFENDANT.)
)
 _____)

TRANSCRIPT OF PROCEEDINGS OF A SENTENCING HEARING
BEFORE THE HONORABLE GEORGE C. SMITH
WEDNESDAY, MAY 22, 2013; 1:30 P.M.
COLUMBUS, OHIO

FOR THE PLAINTIFF:
US ATTORNEY'S OFFICE
By: HEATHER HILL, ESQ.
303 MARCONI BOULEVARD, 2ND FLOOR
COLUMBUS, OH 43215

FOR THE DEFENDANT:
By: SAMUEL WEINER, ESQ.

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Proceedings recorded by mechanical stenography, transcript
produced by computer.

GEORGINA L. WELLS
FEDERAL OFFICIAL COURT REPORTER
85 MARCONI BOULEVARD, ROOM 121
COLUMBUS, OHIO 43215

Wednesday Afternoon Session,

May 22, 2013.

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COURTROOM DEPUTY CLERK: The Court calls Tony R. Fisher. The defendant and defendant's counsel please come to the podium

THE COURT: Mr. Weiner, how are you?

MR. WEINER: I am good, Your Honor. And you?

THE COURT: Good. Ms. Hill, I haven't seen you for awhile, have I?

MS. HILL: It has been awhile.

THE COURT: Nice to see you here.

MS. HILL: You as well.

THE COURT: The lady from Indiana is not going to be here?

MS. HILL: No, Your Honor. I will be representing the United States in this case.

THE COURT: Okay. We are here on the Sentencing Hearing of defendant Tony Fisher. I want counsel to know that I have reviewed your memoranda as well as the other exhibits, including the report from Dr. Reardon. I will summarize your arguments, but if you still want to highlight some of those documents you have provided or present any testimony, please let me know when we get to the mitigation phase.

1 Mr. Weiner, have you and your client read and
2 discussed the Presentence Report prepared by the U.S.
3 Probation Office?

4 MR. WEINER: We have, Your Honor.

5 THE COURT: And Mr. Fisher, do you recall reviewing
6 the Presentence Report with your attorney?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And do you, Mr. Fisher, do you
9 understand everything that you and your attorney have
10 discussed regarding the Presentence Report?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And is there anything about the report,
13 Mr. Fisher, that you do not understand?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: And Mr. Weiner, do you have any doubt as
16 to your client's understanding of the Presentence Report?

17 MR. WEINER: I do not, Your Honor.

18 THE COURT: And counsel, for both the government and
19 the defendant, are there any facts reported in the
20 Presentence Report disputed by the defendant or the
21 government?

22 MS. HILL: The government has no factual dispute
23 with the PSR, Your Honor.

24 MR. WEINER: Other than the issues raised in our
25 objections, Your Honor, no.

1 THE COURT: All right. There being no objections to
2 the factual statement contained in the Presentence Report,
3 the Court adopts those statements as its findings of fact.
4 The defendant has entered a valid plea to Count 1 of the
5 Information in Ohio, charging him with coercion and
6 enticement, in violation of 18 United States Code, Section
7 2422(b); and to Count 1 of the Indictment in Indiana,
8 production of child pornography, in violation of 18 United
9 States Code, Section 2251(a). Accordingly, the defendant is
10 adjudged guilty of these charges.

11 The defendant has raised several objections, some of
12 which have been resolved. The Presentence Report addresses
13 Objections 1, 2 and 4 together. Defendant objects to any
14 enhancement in the Presentence Report that arise from the
15 age of the victims, specifically Paragraphs 32, 38 and 39.
16 Defendant asserts that the government has engaged in, quote,
17 sentencing entrapment, end quote, in order to be able to
18 apply the guidelines. Defendant argues that the tapes and
19 the emails show that the agent put forth the ages of the
20 alleged minor children.

21 Additionally, defendant objects to the "double dipping"
22 of enhancements for alleged enticement of minors when neither
23 of the minors existed and the only enticement occurred
24 through an email with the government agent.

25 Finally, defendant objects to the application of the

1 multiple count grouping adjustment because of the calculation
2 of three separate counts.

3 The government agrees that the guidelines have been
4 correctly calculated, but given the circumstances of this
5 case and the ambiguity of Special Instruction Section
6 2G1.3(d) as it relates to fictitious minors, the government
7 does not believe that multiple counts for each of the
8 fictitious minors are appropriate. Therefore, the government
9 believes that the appropriate total offense level should be
10 37.

11 The government also notes that the defendant attempted
12 to entice or coerce both of the fictitious children, having
13 full knowledge of their ages, but suggests the Court use its
14 discretion in considering how ages were inserted into the
15 conversation.

16 And that concludes the summary that the Court has
17 prepared for this. And I will ask if, first of all,
18 Mr. Weiner, are there any further discussion on the
19 objections?

20 MR. WEINER: Your Honor, I would rest on my written
21 objection, but I would simply add, just by point of
22 clarification, that we are not only objecting to the fact
23 that the two children counts were on fictitious children, but
24 we also object, and I believe the Court has indicated, that
25 the calculation for the multiple count enhancements was also

1 affected by that, by those two separate counts, and we object
2 to that calculation, also, Your Honor.

3 THE COURT: And Ms. Hill?

4 MS. HILL: Yes, Your Honor. As the Court indicated,
5 the government does -- we neither concur or disagree with
6 defense counsel. We think that the guidelines as it relates
7 to multiple count grouping rules, that Special Instruction
8 2G1.3(d)(1) is ambiguous. And so, the calculation that we
9 have presented to the Court simply does not take that
10 multiple count enhancement into consideration. We believe
11 under the circumstances of this case, which I have seen come
12 up a number of times, where under the particular
13 circumstances that we have in this case, we do not believe
14 that it is appropriate to apply that multiple count
15 enhancement or the multiple count grouping rules.

16 We do maintain our position that the enhancement
17 related to the ages of the two fictitious children are
18 properly applied per the instructions of the guidelines. The
19 ages of the children were established. Yes, they were
20 established by the undercover law enforcement agents, but
21 that was in response to a question from the defendant of "How
22 old are the children?"

23 And as I believe it is clear in all of the exhibits
24 that the government has attached to its Sentencing
25 Memorandum, the defendant showed absolutely no hesitation in

1 expressing an interest to engage in sexual activity with the
2 children, upon learning their ages. And under those facts,
3 we do not believe this was sentencing entrapment. And I am
4 not sure that I understand the "double dipping" issue, but we
5 don't believe that that is an issue here either. And we do
6 believe that those enhancements related to the ages of the
7 fictitious minors are properly applied in this case.

8 THE COURT: Are what?

9 MS. HILL: Properly applied in this case.

10 THE COURT: Do you have any response, Mr. Weiner, to
11 what Ms. Hill has just said?

12 MR. WEINER: Your Honor, as she indicated, were it
13 not for the conduct of the government in putting the ages of
14 the children into play, we probably wouldn't be here today on
15 these two counts anyway. The issue, even though the Court
16 may not find it a legal issue, would certainly be -- should
17 be considered, I think, will be considered by the Court in
18 mitigation when it comes to imposition of sentence in this
19 matter, Your Honor. Thank you.

20 THE COURT: The Court finds that both the fictitious
21 children -- which were part of the conversation here -- are
22 appropriately considered victims, and the age enhancement is
23 properly applied, regardless of who initially raised the
24 ages of the fictitious children. Defendant's intent to meet
25 up with the 11 and 14 year old boys was clear. And had the

1 defendant only noted an interest in one of the boys or
2 mentioned only the 14 year old boy, this would be a
3 different case.

4 Nonetheless, the Court acknowledges the defendant's
5 argument and the information from the government and will
6 reduce the defendant's offense level from a 38 to a 37,
7 combined with Criminal History of I. The defendant's
8 advisory guideline range is 210 to 262 months.

9 Additionally, with respect to the defendant's
10 sentencing entrapment argument, the Court will consider the
11 argument in determining the appropriate sentence.

12 Both the defendant and the government have filed
13 sentencing memorandum. The defendant requests a downward
14 departure from the advisory sentencing guideline to the
15 mandatory minimum sentences to run concurrently. The
16 defendant acknowledges the severity of his offenses but also
17 asserts that he has no criminal history. He asserts that he
18 was a good student, a hard worker. And he suffers from
19 emotional and psychological issues. The defendant
20 references the report prepared by Dr. Reardon, which the
21 Court has reviewed. The Court also notes defendant's other
22 health issues, including cancer and alcohol and drug abuse.

23 The defendant further argues that any period of
24 incarceration would be just punishment and a lengthy period
25 would not serve any purpose. He again references

1 Dr. Reardon's report indicating that the defendant is a low
2 risk for recidivism. Defendant asserts that the mandatory
3 minimum sentence is sufficient to serve as an adequate
4 deterrent and to protect the public.

5 Defendant requests that he receive treatment for
6 emotional and physical issues, as well as substance abuse
7 treatment while incarcerated. He also requests the Court
8 recommend that he serve his sentence at an FCI, as opposed to
9 a USP.

10 Mr. Weiner, would you like to expand on any of these
11 arguments from your sentencing memo that I have summarized?

12 MR. WEINER: Just briefly, Your Honor. The place
13 that -- the site of placement that we would request would be
14 Elkton, FCI Elkton here in Ohio. I think it has everything
15 that Tony will need to help him get through this time in his
16 life. It has got the RDAP program. It has got counseling,
17 and it has got a medical facility, which, hopefully, will
18 cover his myriad of issues. I would also ask that the Court
19 recommend that Tony at the appropriate time during his
20 sentence be allowed to enter into the RDAP program and that
21 he receive any type of counseling that would be appropriate
22 or would be deemed appropriate after an evaluation at the
23 site of his confinement.

24 THE COURT: Thank you. The government has also
25 filed a sentencing memorandum asserting a downward

1 departure -- asserting a downward departure is not warranted
2 and concurs with the calculations and recommendation of the
3 Probation Officer. The government's discussion of the
4 3553(a) factors highlights the severity of the crime,
5 acknowledging that although the defendant did not actually
6 touch a child, his offense is far more severe than the
7 average viewer of child pornography. The defendant abused a
8 position of trust as a babysitter and mentor of a 14 year old
9 boy to create pornographic images that are now on the
10 internet. Further, there is no question from the e-mails and
11 text messages that the defendant planned to meet up with the
12 father and two boys to engage in sexual acts.

13 The government concedes that many of the issues that
14 the defendant has raised may be mitigating factors in
15 determining a sentence, but argues that these factors do not
16 excuse his heinous criminal acts. The government references
17 U.S. v. Cunningham, in which the Sixth Circuit affirmed the
18 district court's determination that psychological evaluation
19 deserved little weight, stating, quote, defendant's personal
20 history and psychological conditions do not set him apart
21 from many other individuals who suffer from the same trials
22 and yet do not resort to child pornography.

23 Accordingly, the government asserts that a sentence
24 of 210 months, at the bottom of the advisory guideline
25 range, will accomplish the statutory purposes of Section

1 3553(a).

2 Ms. Hill, I have reviewed your memo, as well as the
3 email and text records. Would you like to add anything
4 additional to your argument or respond to any of the
5 defendant's arguments?

6 MS. HILL: Your Honor, I will be brief. We would
7 join in the recommendation for a placement at Elkton. I have
8 handled a number of these cases, and I believe that's the
9 closest place to Columbus and to the defendant's family and
10 so forth that has the sexual offender treatment program, and
11 as Mr. Weiner indicated, also, the RDAP program.

12 I want to clarify just a couple of things briefly.
13 The government understands that this is a difficult case.
14 That the defendant here has had a very difficult life.
15 Clearly, no one can read through the PSR, the sentencing
16 memorandum and the report of Dr. Reardon and come to any
17 other conclusion. And the government is sympathetic to that.
18 And I don't mean in my sentencing memorandum to at all
19 indicate that we believe that he is just a typical
20 run-of-the-mill person who has daily trials and tribulations
21 of a normal person. Yes, it is one of the more aggravated
22 set of circumstances as far as the personal history that I
23 have seen. It is not the worst. Unfortunately, I have seen
24 worse. I have also seen worse offenses. You know, we are
25 not asking for the maximum in this case. We believe the

1 sentence we are asking for is the low end of a guidelines
2 range that we are, you know, we have asked for to be
3 actually lower than that found by the Probation Officer. We
4 believe that that low end of the guideline range
5 appropriately balances the life that the defendant has lived
6 in his trials and tribulations, and it is a heinous offense
7 that he has committed, that he abused the trust of that young
8 boy and that young boy's family. And not only that, but his
9 then attempt to do that yet again when he came here to
10 Columbus to engage in sex with two young boys. The nature of
11 that act, Your Honor, we just do not believe that that
12 balancing of those two factors warrants the downward
13 deviation from the guideline range, and that's why we are
14 asking for the bottom of the guidelines range. Thank you.

15 THE COURT: Thank you, Ms. Hill. After going over
16 all of the arguments that have been made, both before and
17 here at this hearing, I am to say the least deeply disturbed
18 by the emails and text messages, and although I have
19 acknowledged the defendant's lack of criminal history, his
20 work record and emotional and health-related issues, as well
21 as the detailed report prepared by Dr. Reardon. Dr. Reardon
22 has opined that the defendant has a low likelihood of
23 recidivism, which suggests a long sentence consisting of
24 concurrent sentences, is not justified. Based on all of the
25 defendant's arguments, the Court will sentence the defendant

1 slightly below the advisory guideline range, but due to the
2 serious nature of this offense, a sentence above the
3 mandatory minimum sentence is justified. The defendant must
4 be removed from society for a significant period of time just
5 to protect society, and those people that might become
6 victims.

7 And the sentence will be above the mandatory minimum.
8 Although the defendant did not actually harm a child, the
9 Court believes that he intended to, and he presents a very
10 serious danger to the community. Do you have any additional
11 comments on this matter, Ms. Hill?

12 MS. HILL: No, Your Honor.

13 THE COURT: Mr. Weiner, anything? You may speak in
14 mitigation.

15 MR. WEINER: I would like for Tony's grandmother,
16 parents and his brother to speak to the Court, if I would be
17 allowed?

18 THE COURT: Certainly. Please come forward to the
19 rail so at least I can hear them.

20 THE WITNESS: My name is Gwen Fisher, F-I-S-H-E-R.

21 I'm his maternal grandmother. And, of course, I have
22 known him all his life. And Tony and I have a very good
23 rapport. And he is definitely a very, very kind, gentle -- I
24 can't give enough adjectives to describe my grandson. But we
25 have spent a lot of time together. We have gone on vacations

1 throughout this country. And he has always been concerned
2 about the children around him. And he has been concerned
3 about the elderly around him, making sure that they were
4 always in front of him or being taken care of. He loves to
5 go to church. He has been a leader with the young people in
6 the church. He loves to talk to the elderly people. And the
7 best thing that Tony and I have together is we are fanatics
8 about family history. We go to cemeteries; we go to
9 historical societies; we go to genealogical societies; we go
10 to libraries. We love to walk the cemeteries to find all
11 the people who have gone on before us. And it is something
12 that I really miss with my Tony because he was always there
13 and always kind and whatever. So, I am going to miss him,
14 and he is a wonderful young man. Thank you.

15 THE COURT: Thank you.

16 THE WITNESS: Shane Fisher, I'm his brother,
17 F-I-S-H-E-R.

18 We have been very close, we have been the best of
19 friends since we were young. He has always gone above and
20 beyond. His energy when he walks into a room seems to
21 reflect off of everybody else. So, it is just so out of
22 character. Thank you.

23 THE COURT: Thank you for coming down, Mr. Fisher.

24 THE WITNESS: My name is Lynn Fisher, I am Tony's
25 mother. This is one of the hardest things I have ever had to

1 do in my whole life. Tony --

2 THE COURT: It is all right. Take your time.

3 THE WITNESS: He is one of the most loving people
4 that I know of. He likes to make people happy. He enjoys
5 being around elderly people. He likes children. He loves
6 animals. As a matter of fact, he really misses his dog
7 Bandit. Unfortunately, his brother has taken over those
8 responsibilities of taking care of his dog for him. He is
9 not the monster that has been portrayed here today. That
10 just kills me, and I know it does him too because he knows he
11 is not that monster either. I'm just hoping we can all get
12 past this, our lives will never be the same, but I know he
13 understands what he has done. Hopefully, it will all come
14 out being okay in the end. Thank you.

15 THE COURT: Thank you.

16 THE WITNESS: Chris Fisher, F-I-S-H-E-R. I am
17 Tony's dad. Tony was always a very active and good child.
18 He followed instructions. He was easy to discipline. You
19 know, he never questioned any of the things that I tried to
20 do with him as far as correcting him. I could talk to him.
21 He was never -- any strict punishment or anything. Like
22 everyone else says, he lights up a room when he comes in. A
23 lot of people like him. They look forward to seeing him.
24 Just an all around good person. This incident here is
25 totally out of character for anything we have ever seen of

1 Tony. That's about all that I have.

2 THE COURT: Thank you very much. Mr. Fisher, it is
3 now your turn, if you want to say anything, you may certainly
4 do so.

5 THE DEFENDANT: Ever since I was little, my family
6 has done nothing but positive things in my life. I never
7 would have thought that I would have done anything -- even
8 speed law, break speed limit. And it is hard for me to
9 fathom that I am here today, going through this entire
10 experience. It is like I am portraying another person's life
11 in a movie. I have never felt such sorrow for anything in my
12 life or for anybody. I never meant to hurt anybody. I am
13 ashamed and embarrassed that I have to be here. I am
14 extremely sorry to my family and anybody that I hurt. I
15 didn't mean to hurt anybody. I am extremely sorry that I
16 have to be here today. I know one day my family will
17 completely forgive me, and I know God will, too. But I don't
18 think that I will ever be able to forgive myself. That's it.

19 MR. WEINER: That's it, Judge.

20 THE COURT: Thank you for your statement,
21 Mr. Fisher. The Court acknowledges the difficulties that you
22 have had and acknowledges and compliments your family on the
23 strong support and that will -- from this day forward, that's
24 what hopefully will -- the system, the incarceration system,
25 you and your family and your other friends and loved ones

1 must concentrate on getting you well. Do you understand
2 that?

3 THE DEFENDANT: Yes, sir, Your Honor.

4 THE COURT: And I am sure you understand the
5 difficulties that you find yourself in and others find
6 yourselves in. This is one of the most difficult types of
7 cases that the courts have to deal with. And there is a
8 plethora of cases like this where people stand right where
9 you are standing, in other courtrooms across this land, and
10 have to take the punishment and retribution for your
11 activities and for the protection of society, particularly
12 children, in our society. So, I hope you can understand that
13 this is why this has to happen this way. But I hope, and
14 even pray, that you will -- with this strong family support,
15 which not everyone has when they come in here, the strong
16 family support will help you accomplish this and put you at
17 peace.

18 Are there any issues, counsel, including 3553
19 sentencing factors that should be addressed on Mr. Fisher's
20 case that I have not discussed? Or you have not discussed?

21 MS. HILL: I do not believe so, Your Honor.

22 MR. WEINER: I think my sentencing memorandum spoke
23 to them all, Your Honor.

24 THE COURT: Right. The Court acknowledges those.

25 Pursuant to Sentencing Reform Act of 1984 and 18

1 United States Code, Section 3553(a), it is the judgment of
2 the Court that the defendant, Tony R. Fisher, is hereby
3 committed to the custody of the United States Bureau of
4 Prisons to be imprisoned for a term of 120 months on Count 1
5 of the Ohio case and 195 months on Count 1 of the Indiana
6 case to be served concurrently.

7 Upon release from imprisonment, the defendant shall
8 serve a term of supervised release of 10 years. Within 72
9 hours of release from the custody of the Bureau of Prisons,
10 the defendant shall report to the Probation Office in the
11 district to which he is released.

12 While on supervised release, the defendant shall not
13 commit any federal, state or local crimes. He shall be
14 prohibited from possessing a firearm or other dangerous
15 device. The defendant shall not unlawfully possess or use a
16 controlled substance and submit to a drug test within 15 days
17 of release on supervised release and at least two periodic
18 drug tests thereafter. The defendant shall submit to the
19 collection of a sample of his DNA as directed by the
20 Probation Officer or designee of the Bureau of Prisons. The
21 defendant shall comply with the standard conditions of
22 supervised release as adopted by this court. The Court will
23 also impose special conditions of supervised release.

24 Now, Mr. Fisher, do you remember going over the
25 recommended special conditions of supervised release outlined

1 in Paragraphs 1 through 6 on the final pages of the
2 Presentence Report, such as registering as a sex offender and
3 installation of monitoring software on your computer?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Do you understand all of these?

6 THE DEFENDANT: Yes, Your Honor, I do.

7 THE COURT: Rather than me read them, I'm relying
8 on your memory and the fact that your lawyer has them, and
9 you have seen them.

10 The Court therefore adopts those special conditions
11 of supervised release as its own, and they shall be set forth
12 in detail in the Judgment and Commitment Order.

13 The Court finds the defendant does not have the
14 ability to pay a fine. The defendant is ordered to pay a
15 special assessment in the amount of \$200, which shall be due
16 immediately.

17 The Court orders that the property specifically
18 described in Forfeiture A of both the Ohio and Indiana cases
19 be forfeited to the United States in accordance with the plea
20 agreement.

21 Additionally, the Court recommends that the defendant
22 serve his time in one of the Bureau of Prisons sex offender
23 treatment programs, and if Elkton is one of those, the Court
24 will recommend it.

25 And I understand that that is correct, right,

1 Ms. Hill?

2 MS. HILL: Yes, Your Honor.

3 THE COURT: Further, the Court recommends the
4 defendant receive all of the necessary medical treatment
5 while incarcerated, and also, the appropriate substance abuse
6 treatment, including the RDAP program.

7 As justification for this sentence, Tony Fisher is
8 before the Court after pleading guilty to coercion and
9 enticement and production of child pornography. Defendant
10 intended to engage in sexual acts with what he believed were
11 two boys, ages 14 and 11. Additionally, his computer had
12 nine images of child pornography, which included a child that
13 the defendant had mentored.

14 The sentence imposed is consistent with the United
15 States v. Booker decision, which effectively made the
16 sentencing guidelines advisory rather than mandatory. Booker
17 requires to judges to not only consider the guideline range,
18 but also to consider the other factors listed in 18 United
19 States Code, Section 3553(a) in determining the appropriate
20 sentence.

21 The Court has considered the nature and circumstances
22 of the offense, as well as the history and characteristics of
23 the defendant. The defendant was actively trying to engage
24 children in sexual activity, in addition to sharing and
25 possessing child pornography. This offense is very serious

1 and as I have noted, the email and text messages sent by the
2 defendant are very disturbing. The Court, however, has
3 acknowledged all of defendant's arguments regarding
4 emotional, psychological, and physical issues. Further, the
5 report prepared by Dr. Reardon illustrates that defendant has
6 a low likelihood of recidivism.

7 The Court has also considered the need for the
8 sentence to reflect the seriousness of the offense, deter
9 others from criminal conduct, and to provide just punishment
10 for the offense, and the need to protect the public from
11 further crimes of the defendant. The defendant's sentence
12 will serve as an adequate deterrent to others while providing
13 a fair and just punishment for the defendant. And, this
14 lengthy sentence and term of supervised release will protect
15 the public from further crimes of the defendant and help
16 defendant to receive more treatment in hopes that he does not
17 repeat this conduct again.

18 Finally, the Court has considered the advisory
19 sentencing guidelines and the need to avoid unwarranted
20 sentencing disparities, and the slight reduction below the
21 advisory guideline range should not result in any sentencing
22 disparities.

23 In conclusion, after considering the facts of this
24 particular case, the advisory sentencing guidelines, the
25 Section 3553(a) statutory factors and the information in the

1 Presentence Report, the sentence imposed is sufficient, but
2 not greater than necessary to comply with the purposes of
3 sentencing outlined in Section 3553(a). The sentence imposed
4 today will afford the defendant the appropriate and necessary
5 means of rehabilitation and give him the opportunity to lead
6 a productive life in the future.

7 Do the parties have any objections to the sentence
8 just pronounced that have not previously been raised?

9 MS. HILL: Not on behalf of the government, Your
10 Honor.

11 MR. WEINER: No, Your Honor.

12 THE COURT: I will read you your appeal rights,
13 Mr. Fisher. You can appeal your conviction if you believe
14 that your guilty plea was somehow unlawful or involuntary or
15 if there is some other fundamental defect in the proceedings
16 that was not waived by your guilty plea. You also have a
17 statutory right to appeal your sentence under certain
18 circumstances, particularly, if you think the sentence is
19 contrary to law. If you are unable to pay the costs of an
20 appeal, you may apply to this Court for appeal in forma
21 pauperis, that is without payment of fees and costs. Do you
22 understand your rights, Mr. Fisher?

23 THE DEFENDANT: Yes, Your Honor, I do.

24 THE COURT: You may request the Clerk of this Court
25 to prepare and file of a notice of appeal on your behalf. Do

1 you wish to have Clerk file a notice of appeal for you?

2 THE DEFENDANT: Not at this time, Your Honor.

3 THE COURT: Should you change your mind, you have
4 14 days to file your notice of appeal. Contact your attorney
5 or the Clerk of this court through the U.S. Marshal's office
6 to file a notice of appeal.

7 Are there any other matters that we need to take care
8 of? The defendant is in custody. That we need to take care
9 of now? And the Court will grant the motion of your lawyer
10 to request Elkton, if that's the appropriate place.

11 MR. WEINER: Just one other thing, Your Honor, may I
12 request -- could I make an oral motion at this time that we
13 have these proceedings under seal?

14 THE COURT: Yes. Any objection, Ms. Hill?

15 MS. HILL: No objection, Your Honor.

16 THE COURT: The proceedings will be under seal and
17 remain under seal until further order of this Court.

18 MR. WEINER: Thank you very much.

19 THE COURT: There being no further business, we are
20 adjourned.

21 COURTROOM DEPUTY CLERK: Ladies and gentlemen,
22 please rise.

23 - - -

24

25

C E R T I F I C A T E

I, Georgina Wells, do hereby certify that the foregoing is a true and correct transcript of the proceedings before the Honorable George C. Smith, Judge, in the United States District Court, Southern District of Ohio, Eastern Division, on the date indicated, reported by me in shorthand and transcribed by me or under my supervision.

s/Georgina Wells

Georgina Wells,
Official Federal Court Reporter